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Attorneys for Defendant Bitpay, Inc.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

OX LABS INC., a California
Corporation,

Plaintiff,

vs.

BITPAY, INC., a Delaware
Corporation, and Does 1-10,

Defendants.

Case No. CV 18-5934-MWF(KSx)

JOINT RULE 26(f) REPORT

Date: December 17, 2018
Time: 11:00 a.m.
Courtroom: 5A

1 Pursuant to Federal Rule of Civil Procedure 26(f) and the Court's Order
2 Setting Scheduling Conference, Plaintiff Ox Labs, Inc. and Defendant Bitpay, Inc.
3 submit this Joint Rule 26(f) Report.

4 **a. Statement of the Case:**

5 Bitcoin is a digital form of currency (*i.e.*, a cryptocurrency) that can be
6 purchased, traded, and used online, and its price at any given time is determined by
7 the exchange on which it is bought and sold. Because bitcoin's price is determined
8 by supply and demand, as with stocks on a stock exchange, there is inherent price
9 volatility. Plaintiff's wholly-owned subsidiary, SFOX, is a trading hub for
10 institutional investors and certain individuals and family offices that facilitates
11 high-volume cryptocurrency trades through its integrations with different
12 exchanges. Defendant is a bitcoin payment processor that helps merchants accept
13 customers' payments for goods and services with bitcoin rather than traditional
14 payment methods like cash and credit cards.

15 In July 2015, Defendant made several transactions on Plaintiff's platform
16 depositing a total of 1,100 bitcoin. Plaintiff inadvertently credited Defendant with
17 1,300 bitcoin instead of 1,100. Part of the dispute involves whether Defendant
18 knew that it was over-credited, knowingly withdrew the additional 200 bitcoin, and
19 concealed such fact from Plaintiff. Defendant thereafter sold the bitcoin and
20 retained the profit.

21 In February 2017, as part of a reconciliation process, the parties learned that
22 Plaintiff had over-credited the 200 bitcoin. Defendant acknowledged it was over-
23 credited, tendered payment for the profit it earned, but Plaintiff alleges that it is
24 entitled to return of the 200 bitcoin.

25 In addition, in August and October 2017, bitcoin underwent "hard forks,"
26 which meant anyone holding a bitcoin was given bitcoin Cash and bitcoin Gold on
27 a 1:1 ratio. The 200 bitcoin that Bitpay took from Plaintiff thus actually became
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1 200 bitcoin, 200 bitcoin Cash, *and* 200 bitcoin Gold. At the time Plaintiff filed this
2 lawsuit, the total price of these cryptocurrencies was approximately \$1,450,000 on
3 crypto exchanges.

4 Additional Statement by Plaintiff:

5 Defendant acquired and wrongfully kept 200 bitcoin that belonged to
6 Plaintiff. Defendant knew and failed to tell Plaintiff that it acquired Plaintiff's
7 bitcoin, and instead of returning the bitcoin, sold it and kept the proceeds. Plaintiff
8 discovered the error for the first time during an account reconciliation process.
9 Plaintiff has repeatedly asked for the return of its bitcoin, bitcoin cash, and bitcoin
10 gold, but Defendant has refused to return such bitcoin. The price of bitcoin in 2015
11 when the over-credit occurred fluctuated between \$200-500 per bitcoin. In
12 February 2017, bitcoin was selling for approximately \$1,000. Near the end of
13 December 2017, each Bitcoin was selling for \$20,000. In total, at the end of 2017,
14 the bitcoin, bitcoin cash, and bitcoin gold that Defendant refused to return was
15 worth nearly \$4.9 million.

16 Additional Statement by Defendant:

17 It was Defendant that discovered the 200 bitcoin credit error and brought it to
18 Plaintiff's attention in February 2017. The 200 bitcoin, however, were
19 electronically traded without knowing about the error shortly after Plaintiff's own
20 error, netting a profit to Defendant of \$57,216.55. Although the error was
21 undeniably Plaintiff's error, Defendant unconditionally tendered this amount to
22 Plaintiff via a check. Defendant believes that the price of bitcoin on any other date
23 is irrelevant.

24 **b. Subject Matter Jurisdiction:**

25 The parties agree that this Court has subject matter jurisdiction under 28
26 U.S.C. § 1332 because the parties are citizens of different states and the amount in
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controversy, as alleged further herein, exceeds the jurisdictional minimum of \$75,000.

c. Legal Issues:

1. Whether Defendant is liable for conversion for wrongfully exercising dominion over and refusing to return the 200 bitcoin to Plaintiff.
2. Whether Defendant has been unjustly enriched by acquiring and refusing to return the 200 bitcoin to Plaintiff and whether equity dictates the bitcoin should be returned to Plaintiff.
3. If there was a wrongful conversion or unjust enrichment, the proper measure of damages.
4. Whether the statute of limitations has expired.

d. Parties, Evidence, etc.:

Plaintiff - Ox Labs Inc. (its wholly-owned subsidiary is SFOX)

Defendant - Bitpay, Inc.

Percipient Witnesses – Akbar Thobhani (CEO, SFOX); George Melika (CTO, SFOX); Richard Gaston (VP Data Management, SFOX); Bryan Krohn (CFO, Bitpay); Tony Gallippi (CEO, Bitpay); Kirstie Getch (Controller, Bitpay); Patrick Nagurny (Software Engineer, Bitpay), Bitpay auditors, SFOX auditors.

Categories of Key Documents – Communications between SFOX and Bitpay; communications within Bitpay; bitcoin price indices; Bitpay financial statements; documents on cryptocurrencies, valuation, hard forks, nature of cryptocurrencies; the parties' respective audit policies and records.

e. Damages:

Plaintiff:

Plaintiff's requested remedy is the return of its 200 bitcoin, 200 bitcoin Cash, and 200 bitcoin Gold. If Defendant had returned Plaintiff's bitcoin when Plaintiff

1 requested its return, Plaintiff could have sold the bitcoin, bitcoin Cash, and bitcoin
2 Gold for upwards of \$4,900,000 in 2017.

3 Defendant:

4 Defendant's position is that even if there was a wrongful taking, which was
5 due to Plaintiff's error, the measure of damage is the value of the taking at the time,
6 *i.e.*, Defendant's profit at the time, which was already unconditionally tendered via
7 check to Plaintiff.

8 **f. Insurance:**

9 Not applicable.

10 **g. Motions:**

11 The case is at issue. The parties do not currently anticipate motion practice
12 to add new parties to the case. The parties intend to file dispositive motions.

13 **h. Manual for Complex Litigation:**

14 The parties agree that this case does not constitute complex litigation and
15 there is no need to use the Manual for Complex Litigation.

16 **i. Status of Discovery:**

17 The parties will have exchanged initial disclosures before the Scheduling
18 Conference and anticipate propounding other forms of discovery soon thereafter.

19 **j. Discovery Plan:**

20 The parties will have made initial disclosures at the time of the Scheduling
21 Conference without any changes to Rule 26(a) requirements. The parties do not
22 believe discovery should be conducted in phases or be limited to particular issues.
23 The parties intend to enter into a stipulated protective order governing confidential
24 information and potentially a stipulated protective order governing discovery of
25 electronically stored information, if it appears ESI issues will arise. The parties also
26 intend to seek a Rule 502(d) order protecting the inadvertent disclosure of privileged
27 information.
28

The parties will propound written discovery requests and deposition notices related to the claims and defenses in this matter, including but not limited to the Defendant's credit of 200 bitcoin, Defendant's sale of such bitcoin, the value of the bitcoin, bitcoin Gold, and bitcoin Cash, and the circumstances of the discovery of the error and the parties' conduct thereafter. The parties do not believe that applicable discovery rules or limitations need to be changed or limitations imposed in this case.

k. Discovery Cut-off:

Plaintiff:

Plaintiff proposes a discovery cut-off date of October 4, 2019.

Defendant:

Defendant proposes a discovery cut-off date of May 3, 2019.

l. Expert Discovery:

Plaintiff:

Expert Witness Initial Disclosures: September 13, 2019

Expert Witness Rebuttals: October 11, 2019

Expert Discovery Cutoff: November 1, 2019

Defendant:

Expert Witness Initial Disclosures: March 8, 2019

Expert Witness Rebuttals: April 12, 2019

Expert Discovery Cutoff: May 30, 2019

m. Dispositive Motions:

The parties anticipate that this action may be resolved entirely by cross-motions for summary judgment.

n. Settlement/Alternative Dispute Resolution (ADR):

The parties engaged in pre-litigation settlement negotiations but Defendant did not accept Plaintiff's settlement terms. The parties desire a settlement

conference with the assigned magistrate judge.

o. Trial Estimate:

Plaintiff:

Plaintiff estimates 3-5 court days for trial and has demanded a jury trial. Plaintiff estimates calling 4-6 witnesses. The conversion cause of action will be decided by a jury. The unjust enrichment cause of action is equitable in nature will be decided by the Court.

Defendant:

Defendant estimates a 2-3 court days for trial. To the extent there remains a question of fact, the conversion claim will be decided by a jury. Defendant believes that unjust enrichment is an equitable remedy, not an available cause of action, but any issue related thereto will be decided by the Court.

p. Trial Counsel:

Plaintiff's Attorneys:

Philip Leider (Leider + Ayala-Bass LLP)

Joren Ayala-Bass (Leider + Ayala-Bass LLP)

Anahit Samarjian (Leider + Ayala-Bass LLP)

Defendant's Attorneys:

Lawrence H. Kunin (Morris, Manning & Martin, LLP)

Benjamin T. Wang (Russ, August & Kabat)

James S. Tsuei (Russ, August & Kabat).

q. Independent Expert or Master:

The parties agree this is not a case where the Court should consider appointing an independent expert or master. The parties may use their own experts.

r. Timetable:

The parties have completed Exhibit A to this order.

1 s. **Other issues:**

2 The parties do not foresee other issues at this time.

3
4 Dated: December 3, 2018

Respectfully Submitted,
LEIDER + AYALA-BASS LLP

6 By: /s/ Philip A. Leider
7 Philip A. Leider

8 Attorneys for Plaintiff Ox Labs Inc.

9 RUSS, AUGUST & KABAT

10 By: /s/ Benjamin T. Wang
11 Benjamin T. Wang

12 Attorneys for Defendant Bitpay, Inc.

13
14 **SIGNATURE ATTESTATION**

15 I attest that all signatories listed, and on whose behalf the filing is submitted,
16 concur in the filing's content and have authorized the filing.

17 Dated: December 3, 2018

18 By: /s/ Philip A. Leider
19 Philip A. Leider

JUDGE MICHAEL W. FITZGERALD
SCHEDULE OF PRETRIAL AND TRIAL DATES WORKSHEET

Case No.	CV 18-5934-MWF(KSx)			
Case Name	Ox Labs Inc. v. Bitpay, Inc. et al.			
Matter	Plaintiff(s)' Date mo / day / year	Defendant(s)' Date mo / day / year	Court Order	
[X] Jury Trial or [] Court Trial (Tuesday at 8:30 a.m.) Duration Estimate: 3-5 Days	02/25/2020	09/09/19		
Final Pretrial Conference [LR 16] and Hearing on Motions <i>In Limine</i> (Monday at 11:00 a.m. -- three (3) weeks before trial date) Motions <i>In Limine</i> must be filed three (3) weeks before this date; oppositions are due two (2) weeks before this date; no reply briefs.	02/03/2020	08/19/19		
Event	Weeks Before Trial	Plaintiff(s)' Date mo / day / year	Defendant(s)' Date mo / day / year	Court Order
Last Date to Hear Motion to Amend Pleadings / Add Parties		07/15/2019	02/15/19	
Non-Expert Discovery Cut-Off (at least 4 weeks before last date to hear motions)	18	10/04/2019	05/03/19	
Expert Disclosure (Initial)		09/13/2019	03/08/19	
Expert Disclosure (Rebuttal)		10/11/2019	04/12/19	
Expert Discovery Cut-Off	14 *	11/01/2019	05/30/19	
Last Date to Hear Motions (Monday at 10:00 a.m.)	14	11/04/2019	06/03/19	
Last Date to Conduct Settlement Conference	12	11/18/2019	06/17/19	
<u>For Jury Trial</u> ♦ File Memorandum of Contentions of Fact and Law, LR 16-4 ♦ File Exhibit and Witness Lists, LR 16-5.6 ♦ File Status Report Regarding Settlement ♦ File Motions <i>In Limine</i>	6	01/10/2020	07/29/19	
<u>For Jury Trial</u> ♦ Lodge Pretrial Conference Order, LR 16-7 ♦ File Agreed Set of Jury Instructions and Verdict Forms ♦ File Statement Regarding Disputed Instructions, Verdicts, etc. ♦ File Oppositions to Motions <i>In Limine</i>	5	01/17/2020	08/05/19	
<u>For Court Trial</u> ♦ Lodge Findings of Fact and Conclusions of Law, LR 52, and Summaries of Testimony	3	01/31/2020	08/16/19	

* The parties may choose to cut off expert discovery prior to MSJ briefing.

ADR [LR 16-15] Selection:

☐ Attorney Settlement Officer Panel

☐ Private Mediation

☒ **Magistrate Judge (with Court approval)**

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CERTIFICATE OF SERVICE

I certify that counsel of records in this case have consented to electronic service and are being served with a copy of this document via the Court's CM-ECF system pursuant to Civil Local Rule 5-3. Unless governed by Federal Rule of Civil Procedure 4 or Local Rule 79-5.3, the NEF constitutes proof of service of individuals served in this manner.

Dated: December 3, 2018

By: /s/ Philip. A. Leider
Philip A. Leider

Attorneys for Ox Labs Inc.